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No. 06-1456

In the Supreme Court of the United States

HUMBERTO FIDEL REGALADO CUELLAR, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether petitioner's attempt to transport more than $80,000 in drug proceeds, hidden in a secret compartment of a car, from the United States to Mexico sufficiently established that the transportation was "designed," in whole or in part, to "conceal or disguise" the nature, location, source, ownership, or control of those illegal proceeds within the meaning of 18 U.S.C. 1956(a)(2)(B)(i), absent proof that the transportation was designed to create the appearance of legitimate wealth.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-44a) is reported at 478 F.3d 282. A previous, now-vacated opinion of the court of appeals (Pet. App. 45a-56a) is reported at 441 F.3d 329.

JURISDICTION

The judgment of the court of appeals was entered on February 2, 2007. The petition for a writ of certiorari was filed on May 3, 2007. The petition for a writ of certiorari was granted on October 15, 2007. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are set forth in an appendix to this brief. App., *infra*, 1a-19a.

STATEMENT

After a jury trial, petitioner was convicted of attempting to transport the proceeds of drug trafficking from the United States to Mexico with knowledge that the funds were derived from crime and that the transportation was "designed in whole or in part * * * to conceal or disguise the nature, the location, the source, the ownership, or the control" of the proceeds, in violation of 18 U.S.C. 1956(a)(2)(B)(i). A divided panel of the court of appeals reversed petitioner's conviction, holding that the government failed to prove that his transportation was designed to create the appearance of legitimate wealth. Pet. App. 51a-53a. On rehearing, the en banc court affirmed petitioner's conviction, rejecting petitioner's contention that the statute requires proof of conduct that creates the appearance of legitimate wealth and holding that the evidence proved every element of the offense. *Id.* at 11a-12a. This Court granted certiorari.

1. Section 1956(a)(2)(B)(i) of Title 18 makes it a crime, punishable by up to 20 years' imprisonment, to

> transport[], transmit[], or transfer[], or attempt[] to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—
>
> * * * * *
>
> (B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such

> transportation, transmission, or transfer is designed in whole or in part—
>
> > (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity[.]

18 U.S.C. 1956(a)(2)(B)(i). Section 1956(c)(7)(A) defines "specified unlawful activity" to include the racketeering crimes enumerated in 18 U.S.C. 1961(1), which in turn include state and federal drug trafficking offenses. See 18 U.S.C. 1961(1)(A) and (D) (Supp. V 2005).

2. The government's evidence at trial showed that on the evening of July 14, 2004, petitioner was traveling south toward Mexico in a Volkswagen Beetle on United States Route 277. Route 277 ends at Del Rio, Texas, which is across the border from Acuna, Mexico. Deputy Kevin Herbert noticed that petitioner's car was traveling only 40 miles per hour in a 70 mile-per-hour zone and also observed the car veer onto the shoulder of the road. Deputy Herbert suspected that the driver might be intoxicated. Deputy Herbert pulled behind petitioner's car and saw that the car displayed no registration or license plate. Deputy Herbert stopped petitioner two miles south of Eldorado, Texas, about 114 miles from the Mexican border. J.A. 13-15; Gov't Supp. C.A. Br. on Reh'g 2.

Petitioner spoke no English. Deputy Herbert tried to determine whether petitioner had a license and insurance. Petitioner provided a Mexican license and some paperwork from the glove box, but no insurance. On his own, petitioner exited the car and lifted the trunk lid at the front of the car. Nothing was visible in the trunk except the gas tank and spare tire. J.A. 15-17, 20-21, 39.

Trooper Danny Nunez arrived and asked petitioner some questions in Spanish. Petitioner said he had no insurance, and he avoided eye contact and seemed nervous. Petitioner indicated he had been on a road trip for three days looking for a vehicle. Trooper Nunez noticed a large bulge in petitioner's front pocket and asked what it was; petitioner said it was money. Trooper Nunez asked if he could see the money, and petitioner removed the rolled-up cash from his pocket. Both Trooper Nunez and Deputy Herbert detected the odor of marijuana on the money. Petitioner had $2275 in his wallet and pocket. J.A. 24-25, 27, 36-38, 44, 50-51.

Trooper Nunez obtained petitioner's consent to search the vehicle. The officers found no personal items in the car, but did find bus tickets in petitioner's name that showed that petitioner had traveled a lengthy route through Texas by bus over the previous day and night.[1] The officers also looked under the hood and noticed that one of the two clamps on the gas tank of the car was backwards and both clamps had fresh tool marks on them. The fender walls had drill marks and mud was splashed in unusual places on the car, as if it had been applied with an acoustic gun. Trooper Nunez had observed similar techniques used to cover up work done on a vehicle. Trooper Nunez noticed that the carpet in petitioner's car appeared newer than the rest of the vehicle's interior. Animal hair was concentrated in the area behind the back seat. When asked about the animal hair,

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[1] Petitioner first traveled eastward from the border (from Del Rio to Uvalde to San Antonio). Overnight, petitioner traveled north (from San Antonio to Big Spring, Lubbock, Tulia, and Amarillo). Petitioner then traveled south to arrive at the location of the traffic stop, covering nearly 1000 miles in less than two days. J.A. 22-24, 33-34, 48-49; Gov't Supp. C.A. Br. on Reh'g 3.

petitioner said that he had carried goats to Mexico in the car. Trooper Nunez was skeptical, because the hair was concentrated in only one area. J.A. 18, 22, 25, 39-45.

Deputy Jason Chatham arrived with a certified narcotics-detection dog. During a search around the vehicle, the dog alerted to the passenger's side door. Inside the car, the dog alerted to the driver's seat and the back seat. The officers put the currency from petitioner's pocket in the glove box. The dog searched the car again five minutes later and alerted to the glove box in addition to the previous locations. J.A. 55-56.

In the small carpeted cargo area behind the back seat, Deputy Chatham noticed two wooden speaker boxes and a concentration of white animal hair. Deputy Chatham knew that individuals often used animal hair to try to distract drug-detection dogs. Deputy Chatham also noticed two new upholstery tabs holding the carpeting in place and signs of metal welding. Deputy Chatham removed the tabs, pulled back the carpet, and found that a cut-out square of the floorboard was being held in place by screws. Deputy Chatham shined his flashlight under a corner of the cut-out floorboard and discovered a false compartment that contained seven duct-tape bundles. J.A. 28, 57-59.

The bundles contained more than $80,000 in United States currency of all denominations. Each bundle was wrapped in a plastic bag and duct tape and was marked with a dollar amount that accurately reflected the money inside the bundle. In the glove box, officers discovered a Sharpie marker and a Phillips-head screwdriver that matched the screws that secured the hidden compartment. J.A. 29-31.

Petitioner was arrested. At the police station, petitioner asked to call his family in Mexico and said that if

"the vehicle wasn't in Mexico by midnight, * * * his family would be floating down the river." During questioning, petitioner said he had picked up the Volkswagen in a Walmart parking lot and received money from a man he did not know to drive the car to Mexico. At trial, petitioner testified that he previously owned the car, had sold it to a "Mr. Morcia," and was driving the car to Mexico for repairs. J.A. 49-50; Gov't Supp. C.A. Br. on Reh'g 8-10.

An expert in drug trafficking organizations explained that the largest problem of any drug organization is "what to do with their cash." Cash sales of drugs generate a "huge * * * amount of paper," and drug organizations cannot deposit currency in the bank without "doing some paperwork that they don't want to do." Drug organizations, the expert explained, therefore hire drivers to take the money "in secret back down to Mexico," often using hidden compartments in cars. The money is usually packaged in cellophane or duct tape so that it is easy to handle and the amount is known. Materials such as plastic and duct tape also can contain the scent of marijuana, which will "permeate" money that has been stored with the drugs. The expert explained that a driver often does not load the car, see the car loaded, or "know anything more than what he needs to drive that money into Mexico," which limits the information he can provide if he is stopped by law enforcement. The drivers generally do know that they are transporting drugs or money, and the vehicle often is registered to the driver to negate suspicion in the event of a traffic stop. The expert testified that the Mexican economy is largely cash-based and that American dollars are widely accepted in the border towns. J.A. 63-71.

3. The jury found petitioner guilty of violating 18 U.S.C. 1956(a)(2)(B)(i). The district court sentenced him to 78 months of imprisonment, to be followed by three years of supervised release. J.A. 2-4.

4. A divided panel of the court of appeals reversed petitioner's conviction. Pet. App. 45a-56a. The majority concluded that the government had proved beyond a reasonable doubt that the cash secreted in petitioner's car was illegal drug proceeds, that petitioner knew it was illegal drug proceeds, and that petitioner was attempting to transport the money to Mexico. *Id.* at 49a. But the majority held that the government failed to show that petitioner's transportation of the money "was designed in whole or in part to conceal or disguise its nature, location, source, ownership or control." *Id.* at 49a-50a. The majority noted that petitioner "was not trying to create the appearance of legitimate wealth by smuggling drug money across the border." *Id.* at 52a (internal quotation marks and citation omitted). In the majority's view, "[t]aking hidden cash to Mexico is not money laundering unless some further design to conceal can be proved. The statute would prohibit taking drug money to Mexico for the purpose of concealing the fact that it is drug money. The statute does not outlaw concealing drug money from the police for the purpose of taking it to Mexico." *Id.* at 51a.

In a dissent, Judge Davis concluded that the government's proof that "the defendant knowingly concealed the [drug proceeds] in the vehicle and intended to deliver the funds to Mexico" established the concealment element of money laundering. Pet. App. 53a.

5. The court of appeals granted the government's petition for rehearing en banc and affirmed petitioner's conviction. Pet. App. 1a-44a. The court concluded that

"[o]n several bases, * * * the government adequately established the concealment prong of the statute, i.e.[,] that [petitioner's] transportation of the funds was designed, in whole or in part, to conceal or disguise the nature, location, source, ownership or control of the proceeds." *Id.* at 10a-11a. The court held, first, that the evidence established that the transportation of the drug proceeds "was designed to conceal the nature of the proceeds." *Id.* at 11a. The court noted that the odor of the proceeds "associated [them] with illicit drug activity" and that "aspects of the transportation"—particularly the manner in which the money was wrapped and concealed for transport and the use of animal hair to distract drug detection dogs—"were designed to conceal or disguise the nature of the cash as drug proceeds." *Ibid.* The court held that those same facts also supported the conclusion that "the transportation was designed to conceal the location of the cash." *Ibid.*

Second, the court held that the evidence demonstrated that "the transportation was designed to conceal or disguise the source, ownership or control of the cash." Pet. App. 11a. The court noted that petitioner had little information about the owner of the cash and that the "transportation plan allowed the owner to put the cash in the hands of an intermediary or third party, which made it difficult for authorities to determine who actually owned or controlled the cash." *Ibid.* That conclusion, the court explained, was further supported by the expert testimony concerning drug dealers' practice of "insulat[ing] themselves" from couriers and others in the drug organization "to avoid revealing their identity." *Id.* at 11a-12a.

The en banc majority rejected petitioner's contention that the money laundering statute "requires proof that

the defendant's acts created the appearance of legitimate wealth or converted dirty money into clean." Pet. App. 12a. The court reasoned that "creating the appearance of legitimate wealth is one way of concealing illicit funds, [but] it is not the only way concealment can be established." *Ibid.* The court observed that "Congress chose the broad, unqualified word 'conceal'" and that "[i]t makes no sense to say that Congress only intended to prohibit concealment that is accomplished in a certain way." *Ibid.*

Three judges dissented. Pet. App. 22a-44a. The dissent distinguished between "concealing money to transport it, and transporting money to conceal its location" and concluded that only the latter conduct is encompassed by the "definition of money laundering, which is to make dirty money difficult to trace by concealing its illegality." *Id.* at 27a. In the dissent's view, the government failed to satisfy the concealment element because it did not prove "what [petitioner] planned to do with the money once he reached his destination" and did not establish "a design to create the appearance of legitimate wealth." *Id.* at 25a, 38a.

SUMMARY OF ARGUMENT

The money laundering statute prohibits, among other things, the cross-border transportation of illegal proceeds when that transportation is "designed to conceal or disguise" any one of five attributes of the proceeds—their nature, location, source, ownership, or control. The statute does not limit the "concealment or disguise" element to any one means or method, nor does it require proof of a design to create an "appearance of legitimate wealth," words that appear nowhere in the statute's text.

Petitioner's conduct fell squarely within the terms of the statute as written, and his conviction should be affirmed.

A. The money laundering statute contains clearly defined elements prohibiting the transportation or attempted transportation of certain criminally derived proceeds when the defendant has knowledge of two things: that the funds are proceeds of some unlawful activity and that the transportation is designed to conceal or disguise one of the five listed attributes of the proceeds. Petitioner's argument that the transportation must be designed to produce an "appearance of legitimate wealth" would engraft language onto the statute that Congress did not write. That phrase is not in the statute and cannot be inferred from the statutory terms. The title of the statute— "Laundering of monetary instruments"—cannot limit the plain meaning of the text. Indeed, it is indisputable that the operative provisions of the money laundering statute prohibit some conduct that is not "traditional" money laundering as petitioner would define it. Even if the title of the statute had relevance, it could not be read to limit the scope of only some of the provisions within it.

B. The legislative history of the money laundering statute reinforces the conclusion that the statute contains no "appearance of legitimate wealth" limitation. That history demonstrates that Congress did not view "money laundering" as being limited to a "traditional" or "classic" form of the offense. Congress viewed "money laundering" as encompassing many methods and motives for concealing or disguising the proceeds of crime, including the surreptitious transportation of illegal proceeds across the United States border. Congress was concerned with a variety of means of disguising or concealing illegitimate funds. Disguising illegitimate funds

as legitimate wealth is just one means to that end, and there is no reason to think that Congress intended to address only that one means. To the contrary, Congress enacted the money laundering statute to criminalize a spectrum of conduct that impairs the ability of law enforcement to find and recover the illegal proceeds of certain crimes. Petitioner's conduct falls squarely within that spectrum.

C. The bulk cash smuggling statute, 31 U.S.C. 5332 (Supp. V 2005), does not support the argument that money laundering requires an "appearance of legitimate wealth." The bulk cash smuggling statute covers a distinct and less culpable category of conduct and extends to large sums of cash that are wholly legitimate. Bulk cash smuggling requires proof that a defendant concealed more than $10,000 during a border crossing and intended to evade a currency reporting requirement. It does not purport to deal with cases where the government can show that the proceeds were illegal and the defendant knew that fact. When a defendant surreptitiously transports or attempts to transport illegal proceeds across the border knowing of their illegal character, money laundering is the appropriate charge.

D. The rule of lenity has no applicability to this case. The text of the money laundering statute "does not demonstrate ambiguity. It demonstrates breadth." *Sedima, SPRL* v. *Imrex Co.*, 473 U.S. 479, 499 (1985) (internal quotation marks and citation omitted). Nor is there any reason to believe that the statute poses any danger of criminalizing apparently innocent conduct. The requirement that a defendant know that he is concealing or disguising criminally derived proceeds ensures that no blameless conduct is even possibly reached by the statute.

E. Petitioner's conduct fell squarely within the coverage of the money laundering statute. Petitioner attempted to transport more than $80,000 in drug trafficking proceeds to Mexico in a secret compartment of a car, knowing of the illegal origins of the funds. The evidence established that petitioner's transportation of the illegal proceeds was designed, at least in part, to conceal or disguise the "location" and "nature" of the funds by moving them to Mexico without detection by law enforcement. The evidence also established that the transportation of the funds was designed, at least in part, to conceal or disguise the "source," "ownership," and "control" of the proceeds by shielding the identity of the party for whom petitioner transported the funds.

ARGUMENT

PETITIONER'S ATTEMPTED CROSS-BORDER TRANSPORTATION OF ILLEGAL PROCEEDS VIOLATES THE FEDERAL MONEY LAUNDERING STATUTE, REGARDLESS OF WHETHER IT WAS DESIGNED TO CREATE AN APPEARANCE OF LEGITIMATE WEALTH

The money laundering statute under which petitioner was charged is clearly written to reach the conduct in which petitioner engaged, *i.e.*, seeking to transport illegal proceeds out of the United States knowing of their illegal character and knowing of the design of the transportation to hide the funds themselves, their illegal origins, their ownership, and their control. Petitioner argues that "concealment" money laundering encompasses only conduct that "creates the appearance of legitimate wealth." That phrase, however, does not appear in the statute, and none of petitioner's arguments justifies importing such an extra-textual limitation. See *Lamie* v. *United States Tr.*, 540 U.S. 526, 538 (2004) (courts should

not "read * * * absent word[s] into [a] statute"). Because a jury could reasonably find that petitioner's attempted transportation to Mexico of drug proceeds hidden in a secret compartment of a car was designed to conceal or disguise at least one of the characteristics of the funds listed in the statute, the judgment should be affirmed.

A. The Text Of The Statute Does Not Require A Design To Create The Appearance Of Legitimate Wealth

Petitioner and amicus principally argue (Br. 11; National Association of Criminal Defense Lawyers Amicus Br. in Support of Pet. 2) that "only concealment that creates the appearance of legitimate wealth" is covered by 18 U.S.C. 1956 (2000 & Supp. V 2005) and that, therefore, the "[m]ere[] hiding" of drug proceeds while crossing the United States border is not money laundering. That argument is contrary to the statutory text and relies on an incomplete reading of the legislative history. While "traditional" money laundering—complex financial transactions intended to make illegal money look legitimate—was a central concern of Congress in enacting Section 1956, it was not Congress's sole concern. The statute explicitly covers, and was intended to cover, a wide range of conduct that impairs the ability of law enforcement to find and recover the proceeds of crime.

1. Section 1956(a) prohibits, among other things, transactions in or the cross-border transportation of the proceeds of certain crimes (that is, the proceeds of "specified unlawful activity," including drug trafficking) if the transaction or transportation "is designed in whole or in part * * * to conceal or disguise the nature, the location, the source, the ownership, or the control of" the funds. 18 U.S.C. 1956(a)(2)(B)(i). A violation occurs

when a transaction or cross-border transportation is designed either to conceal "*or*" to disguise any one of the listed attributes of illegal proceeds. The phrase "in whole or in part" indicates that the "concealment" or "disguising" of a listed attribute need not be the sole design of the transaction or cross-border transportation. The government must prove that the defendant knew that the proceeds were derived from crime (although the defendant need not know that the underlying crime was "specified unlawful activity") and that the transaction or transportation was designed to conceal or disguise the proceeds in the relevant sense.

Congress did not define the phrase "designed in whole or in part * * * to conceal or disguise," although it did define some other statutory terms. See 18 U.S.C. 1956(c) (2000 & Supp. V 2005). When not otherwise defined, "statutory terms are generally interpreted in accordance with their ordinary meaning." *BP Am. Prod. Co.* v. *Burton*, 127 S. Ct. 638, 643 (2006). The ordinary and primary meaning of the verb "design" is "to conceive and plan out in the mind." *Webster's Third New International Dictionary of the English Language Unabridged* 611 (1993) (*Webster's Third*). See *Webster's New International Dictionary Second Edition Unabridged* 707 (1958) (*Webster's Second*) ("To plan mentally."); *The American Heritage Dictionary of the English Language* 506 (3d ed. 1992) (*American Heritage*) ("to conceive or fashion in the mind; invent"). "Conceal" ordinarily means: "to hide; withdraw or remove from observation; cover or keep from sight." *The Random House Dictionary of the English Language Unabridged* 422 (2d ed. 1987). See *Webster's Third* 469 ("To place out of sight: withdraw from being observed: shield from vision or notice."); *Webster's Second* 551 ("To hide or withdraw from

observation."); *The Oxford Dictionary of the English Language* 646 (2d ed. 1989) ("To keep from the knowledge or observation of others, refrain from disclosing or divulging, keep close or secret."). "Disguise" has as its primary meaning: to "change the customary dress or appearance of: furnish with a false appearance or an assumed identity." *Webster's Third* 649; accord *Webster's Second* 747.

2. Petitioner argues that an "appearance of legitimate wealth" requirement is implicit in the "conceal or disguise" provisions of 18 U.S.C. 1956(a). Petitioner reasons that the "attributes" of illegal proceeds listed in those provisions are ones "that would reveal [the proceeds] to be illicit." Pet. Br. 20-21. Therefore, petitioner concludes, any conduct that "conceal[s]" or "disguis[es]" any of those attributes "will necessarily have the effect of making the funds appear to be legitimate." *Id.* at 21. That argument is unsound.

In the first place, the object of money laundering is accomplished by concealing or disguising the illegitimate nature of illegal proceeds. While the classic way to conceal or disguise such illegitimate funds is to make "the funds appear to be legitimate," it is not the only way. An equally effective way to "disguise" illegitimate funds is to get them out of the country altogether, in which case they will not betray the illicit nature of an unlawful enterprise. "Concealing" those funds by moving them abroad has the same effect. Section 1956(a) expressly covers this stratagem for concealing or disguising illegitimate funds.

Moreover, petitioner is not correct when he contends that each of the "attributes" of illegal proceeds listed in the statute, if exposed, "would reveal" the illegitimacy of the funds. Merely revealing the "location" of funds in a

bank account, a safe deposit box, or in the Cayman Islands, for instance, need not also reveal that the funds are criminally derived. Likewise, revealing the "ownership" or "control" of funds need not expose their illegitimacy. Individuals engaged in crime can have legally-derived assets also. The same is true with respect to the "source" of proceeds: revealing from whom the proceeds came would not necessarily reveal their illegal character. Only revelation of the "nature" of the funds would necessarily disclose their origins in illegal activity. If Congress intended to limit the statute to the concealment or disguising of attributes that "would reveal [illegal proceeds] to be illicit," it would have stopped with "nature." Pet. Br. 21-22.

Petitioner also is incorrect that any transaction or transportation designed to conceal or disguise one of the listed attributes necessarily will "mak[e] the funds appear to be legitimate." Pet. Br. 21. A transaction or transportation designed to make illicit funds appear legitimate will necessarily be designed to disguise their "nature." A transaction that disguises another attribute, such as the "source," "ownership," or "control" of illegal proceeds, may make detection less likely without making the funds appear legitimate at all. A drug kingpin who transfers illegal proceeds to the account of his confederate to obscure his role in the crime has not made the funds appear legitimate, but he has "disguised" his "control" of them.

Moreover, "conceal" and "disguise" are different verbs with distinct meanings. A design to "conceal" an attribute of illegal proceeds listed in the statute need not make the funds appear legitimate. To the contrary, a design to conceal generally makes the funds or an attribute of the funds "disappear." Making the funds or an

attribute of the funds appear to be something else is more naturally covered by the statutory term "disguise." Thus, transferring illegal proceeds to an offshore account to avoid taxation or forfeiture "conceals" the location and existence of the funds, but it does not transform them into apparently legitimate wealth. To the contrary, it creates the appearance of having no wealth at all.[2]

3. Petitioner notes (Br. 17) that the President's Commission on Organized Crime (Commission) defined money laundering as "the process by which one conceals the existence, illegal source, or illegal application of income, *and then* disguises that income to make it appear legitimate." President's Comm'n on Organized Crime, *The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering, Interim Report to the President and the Attorney General* 7 (1984) (*Commission Interim Report*) (emphasis added).[3] In the statute, however, Congress departed from the language in

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[2] Under the anti-surplusage canon of statutory construction, courts have a duty "to give effect, if possible, to every clause and word of a statute." *Duncan* v. *Walker*, 533 U.S. 167, 174 (2001) (quoting *United States* v. *Menasche*, 348 U.S. 528, 538-539 (1955)); see *Williams* v. *Taylor*, 529 U.S. 362, 404 (2000) (describing anti-surplusage canon as a "cardinal principle of statutory construction"). In order to give independent meaning to the statutory phrases "designed * * * to * * * disguise" and "designed * * * to conceal," 18 U.S.C. 1956(a)(1)(B)(i) and (a)(2)(B)(i), the phrases should be interpreted to encompass distinct classes of transactions and transportations.

[3] The Commission was established by President Ronald Reagan in 1983 and was directed to analyze organized crime, including the sources and amounts of its income, and to evaluate federal laws directed at combating organized crime. Exec. Order No. 12,435, 3 C.F.R. 244 (1983). Its report led to the initiative in Congress to enact a money laundering offense. The money laundering statute was enacted two years later, in October 1986.

the Commission's definition in several ways, including through the use of "or" rather than "and" in the "conceal or disguise" provision. This drafting choice is consistent with the overall approach that Congress took to the money laundering statute: while its terms capture what is conventionally understood to be "money laundering," Congress also reached a broader range of conduct in order to prevent laundering strategies and concealment of funds that would evade a narrower prohibition.

4. Petitioner also argues (Br. 21-23 & n.11) that the "overall structure" of the statute compels the conclusion that the "conceal or disguise" provision is, in fact, an "appearance of legitimate wealth" provision. The argument goes: (1) the "conceal or disguise" provision is identically worded in the "financial transaction[]" and the "international transportation" subsections of 18 U.S.C. 1956(a); (2) "the *only* way" (Pet. Br. 21) a financial transaction can "conceal or disguise" the relevant attributes of illegal proceeds is to make the proceeds appear legitimate; and (3) therefore, an international transportation cannot "conceal or disguise" within the meaning of the statute unless it too is designed to make illegal proceeds appear legitimate. Petitioner is correct at step one, but his logic fails at steps two and three.

In particular, petitioner is incorrect (Br. 21-22) that a financial transaction can conceal the relevant attributes of illegal proceeds "*only*" by making the proceeds "appear[] to be the product of legitimate commercial activity." Although petitioner asserts (Br. 21) that a transaction "is not a tangible opaque thing, like a vault or a wall, that can be employed to hide money or property from prying eyes," the statutory definition of "transaction" includes "use of a safe deposit box," which is exactly "like a vault." See 18 U.S.C. 1956(c)(3). The use of

a safe deposit box cannot make illegal proceeds appear legitimate or otherwise disguise them. But it can conceal their location, which violates the statute when that is the design of the transaction.[4] In 1992, Congress amended Section 1956 to add the use of safe deposit boxes to the statutory definition of "transaction." See Housing and Community Development Act of 1992, Pub. L. No. 102-550, 106 Stat. 3672. That amendment refutes petitioner's argument that an "appearance of legitimate wealth" requirement is implicit in the statute.

Furthermore, other types of transactions also can be designed to conceal attributes of illegal proceeds without making the launderer's wealth appear legitimate. A defendant who merely transfers illegal proceeds to his offshore account has concealed the location of the proceeds but has created no appearance that they were earned legitimately. A defendant who uses a fictitious name on that same offshore account has concealed his ownership and control of the funds but has come no closer to creating an appearance of legitimate wealth. Like a safe deposit box, bank accounts can indeed "hide money or property from prying eyes," and thus can "conceal" attributes of funds without also disguising the funds as "legitimate

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[4] See *United States* v. *Stephenson*, 183 F.3d 110, 120 (2d Cir.) (affirming conviction under Section 1956(a)(1)(B)(i) where defendant caused his wife to place $27,800 in drug proceeds in safe deposit box "so as to conceal" them), cert. denied, 528 U.S. 1013 (1999); see also *United States* v. *Bowman*, 235 F.3d 1113, 1115-1116 (8th Cir. 2000) (affirming convictions under Section 1956(a)(1)(B)(i) where defendant deposited $1,640,000 in bank-robbery proceeds in multiple safe deposit boxes in his own name and shifted the proceeds between boxes; jury could conclude that defendant's conduct was designed "to make tracking the money difficult").

wealth." Pet. Br. 21.[5] As those examples show, petitioner's theory ignores the reality that Congress' concern was with a variety of mechanisms to conceal or disguise illegitimate wealth, and it was not focused exclusively on just one way to do so–viz., making illegitimate wealth look legitimate.

Even if it were true that financial *transactions* designed to conceal one or more of the relevant attributes of illegal proceeds often will result in an "appearance of legitimate wealth," it does not follow logically that the statute covers only a cross-border *transportation* that has that effect. As petitioner concedes (Br. 23), the context of a phrase matters. A "transportation" of illegal proceeds ordinarily will involve a "carrying" of the funds from one geographical location to another. See, *e.g.*, *American Heritage Dictionary of the English Language* (4th ed. 2000) (to "transport" means to "carry from one place to another; convey"); *Webster's Third* 2430 (to "transport" means to "transfer or convey from one person or place to another: carry, move"). Because of its essentially spatial nature, a "transportation" of funds is more likely to be designed to conceal, at a minimum, the "location" of illegal proceeds and may less often be designed to conceal the "nature" or "source" of the proceeds (although those attributes will often be concealed as well). That result is entirely consistent with

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[5] See *United States* v. *Cihak*, 137 F.3d 252, 262 (5th Cir.) (following co-defendant's conviction, defendant's hasty liquidation and transfer of illegal assets to his own accounts abroad showed design to conceal source and location of funds), cert. denied, 525 U.S. 847, and 525 U.S. 888 (1998); *United States* v. *Abbell*, 271 F.3d 1286, 1298 (11th Cir. 2001) (lawyer who deposited "hush money" in inmates' accounts using drug-cartel proceeds concealed the source of the funds; statute does not require that appearance of legitimate wealth be generated).

the statutory language. Moreover, in the particular context of trans-border transactions, the need to disguise illegitimate wealth as legitimate wealth is reduced. The very act of getting the funds out of the country significantly reduces the chance that substantial quantities of unexplained cash that would betray the criminal nature of an enterprise will be detected.

Congress focused the international provision of the statute on the "transportation" itself—not, as petitioner urges (Br. 30), on "transactions" that might follow the transportation. It would have made no sense for Congress to have required the government to establish the uses to which funds might be put in the future after they are secreted abroad. Just as removing illegitimate funds from the country decreases the chance that those funds will be detected by United States authorities, the removal of the funds makes it more difficult for United States authorities to determine what happens next to the funds. Accordingly, petitioner's proposed requirement would enable money launderers to frustrate enforcement efforts because of the inability of the government to identify the foreign laundering networks who might aid domestic criminals once the funds were successfully exported. Instead of requiring proof of post-transportation designs, Congress focused on how the transportation itself was "designed." And Congress underscored that focus by including "location"—a similarly spatial concept—as one of the attributes of illegal proceeds that may be the object of the prohibited concealment under the statute. Congress further provided that the design to conceal need be shown with respect to only *one* of the attributes of illegal proceeds for the offense to be established. All of those choices indicate that Congress did *not* intend to draft a statute that could be violated in only

one way that was tied to ultimate efforts to cleanse illegal funds. Rather, Congress drafted a statute that would comprehensively reach the variety of ways that criminals would seek to dispose of their illegal proceeds, without saddling the government with unduly onerous burdens of proof.

5. Petitioner argues (Br. 14-15) that the title of 18 U.S.C. 1956 (2000 & Supp. V 2005), "Laundering of monetary instruments," supports his view that the statute covers only conduct that creates the appearance of legitimate wealth. This Court has repeatedly held that "the title of a statute . . . cannot limit the plain meaning of the text." *Pennsylvania Dep't of Corr.* v. *Yeskey*, 524 U.S. 206, 212 (1998) (quoting *Brotherhood of R.R. Trainmen* v. *Baltimore & Ohio R.R.*, 331 U.S. 519, 528-529 (1947)). That axiom is particularly relevant to the money laundering statute because "[t]he phrase 'money laundering' has been used in very different senses" and "Congress has used it loosely in legislative history, sometimes limiting it to the classic core but also including the currency reporting requirements." B. Frederic Williams, Jr. & Frank D. Whitney, *Federal Money Laundering: Crimes and Forfeitures* 5 (1999).[6] See, *e.g.*, 31 U.S.C.

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[6] The commentators further explained:

> Congress has never prohibited 'money laundering,' but targeted certain conduct which it specified in technical detail without ever using the phrase within the text of the statute. * * * The phrase has no value except as a convenient short hand for the offenses specified in [Sections] 1956 and 1957 or perhaps the general problem these and the currency reporting statutes were designed to constrain. Whether conduct meets anyone's concept of what is "money laundering" is irrelevant to whether conduct violates one of these sections. If conduct meets all the elements of one of these

5340(2) (defining "money laundering and related financial crime" as "the movement of illicit cash or cash equivalent proceeds into, out of, or through the United States, or into, out of, or through United States financial institutions).

Moreover, the same statute includes both "promotional" money laundering (18 U.S.C. 1956(a)(1)(A)(i))—transactions that plow proceeds back into an illegal enterprise—and the transportation of *any* funds across the United States border with the intent to promote specified unlawful activity (18 U.S.C. 1956(a)(2)(A)). Neither of those offenses constitutes "traditional" money laundering under petitioner's definition. There is thus no basis for petitioner's argument that an "appearance of legitimate wealth" requirement should be inferred from the title of the statute.[7]

B. The Legislative History Does Not Support Petitioner

Because the statutory text defeats petitioner's argument that 18 U.S.C. 1956(a) contains an implicit "appearance of legitimate wealth" requirement, there is no need to resort to legislative history. See, *e.g.*, *Whitfield*

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offenses, the statute is violated even if the conduct could not be called money laundering by any particular definition.

Williams & Whitney, *supra*, at 6.

[7] Petitioner also cannot support an "appearance of legitimate wealth" requirement merely by citing cases that, on their own facts, would have met such a requirement if it existed. See Pet. Br. 25-27. One of the cases petitioner cites for its complex facts alone, *United States* v. *Bockius*, 228 F.3d 305 (3d Cir. 2000), actually undercuts petitioner's argument that Section 1956 is limited to conduct that creates an "appearance of legitimate wealth." In *Bockius*, the Third Circuit recognized that the money laundering statute has an "inclusive scope" that extends beyond the traditional understanding of that term. *Id.* at 312-313.

v. *United States*, 543 U.S. 209, 215 (2005). If consulted, however, the legislative history does not assist petitioner. Petitioner's argument for an "appearance of legitimate wealth" requirement relies heavily on his assertion that the statute has a single purpose. Petitioner refers to the "specific evil" (Br. 14) addressed by the statute and asserts that "Congress's sole concern was with the ultimate act of sanitizing the proceeds of illegal activity to remove its illicit taint" (*id.* at 24-25). Petitioner's suggestion that Congress enacted Section 1956 as a surgical strike on only those defendants who manipulate illegal proceeds to create the appearance of legitimate wealth lacks merit. Certainly, "traditional" money laundering and its increasing level of sophistication was a central concern of Congress. "But statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale* v. *Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998). See *Gonzales* v. *Oregon*, 546 U.S. 243, 288 (2006) (finding "no reason to think" that a statute's "*principal* concern" is its "*exclusive* concern") (Scalia, J., dissenting). The legislative history of 18 U.S.C. 1956 confirms what its text makes clear: Congress's purpose was to address a spectrum of conduct—including but not limited to "traditional" money laundering—that impairs the ability of law enforcement to find and recover the proceeds of crime. Indeed, Congress's principal focus could be aptly described as addressing efforts to disguise or conceal illegitimate funds. Making illegitimate funds appear legitimate is just one means to that end and making the funds disappear by secreting them out of the jurisdiction works well too—and there is no reason that Congress would

have been concerned with only one aspect of the problem.

1. As noted, note 3, *supra*, the initiative to enact criminal federal money laundering legislation to supplement currency reporting requirements began with the appointment of the Commission. In March 1984, the Commission held a public hearing on money laundering. The Commission's chairman, Irving R. Kaufman (Kaufman), opened the hearing by outlining a variety of law enforcement challenges the Commission sought to address, which included not only the investment of criminal proceeds in the legitimate economy, but also the concealment of funds from taxation and civil forfeiture. President's Comm'n on Organized Crime, *Organized Crime and Money Laundering, Record of Hearing II, March 14, 1984, New York, New York* 6-7 (1984) (*Record of Hearing*).[8] Kaufman noted that laundering "schemes are conducted in a number of different fashions," including through the "simpl[e] deposit [of] large sums of cash with an off-shore financial institution." *Id.* at 6.

In its interim report, the Commission made clear that it viewed "laundering" as encompassing a "broad spectrum of techniques." *Commission Interim Report* 7. "At one end of the spectrum" was the "narcotics trafficker who wishes merely to increase the immediate portability of his cash receipts [by] simply exchang[ing] smaller-denomination bills (*e.g.*, one-, five-, and ten-dollar bills) for larger-denomination bills." *Id.* at 8. "At the other end of the spectrum" was the "high-level member of a large organization that derives vast sums

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[8] Kaufman stated: "Whatever technique is employed, the result is the same. When criminals launder funds they avoid both taxation and the possibility of loss in civil forfeiture proceedings." *Record of Hearing* 7.

of money from continuing illegal activities." *Ibid.* The Commission observed that the more sophisticated criminal's laundering techniques could include "the use of courier services or electronic fund transfers, the processing of funds through layers of fictitious entities, and the creation of false documentation to improve the appearance of legitimacy." *Ibid.* The Commission Interim Report also expressed specific concern about the law enforcement challenge presented by the physical transportation of illegal funds across the southern borders of the United States, providing as one example a "Mr. X" who on one occasion attempted to transport boxes containing $5 million in unreported cash to Panama on his Learjet. *Id.* at 14-15. Thirty kilograms of cocaine and an Uzi submachine gun were later found in Mr. X's "business office." *Ibid.*

The Commission prepared a draft of a new criminal offense, which it entitled "Laundering of monetary instruments." *Commission Interim Report* 67. The Commission's proposal criminalized participation in any transaction involving monetary instruments in, through, or by a financial institution (1) with the intent to promote unlawful activity or (2) with knowledge or reason to know that the monetary instruments were derived from unlawful activity. *Ibid.*[9]

2. In October 1985, the Senate Committee on the Judiciary held hearings on three bills (S. 572, 99th

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[9] The statute ultimately enacted by Congress bore the same title. The origin of the title in the Commission's proposal further undercuts petitioner's argument (Br. 14-15) that the term "laundering" limits the scope of the statute to offenses involving an "appearance of legitimate wealth." The offense proposed by the Commission was very broad and contained no hint of the limitation that petitioner now indicates is implicit in the title of the statute.

Cong., 1st Sess.; S. 1335, 99th Cong., 1st Sess.; and S. 1385, 99th Cong., 1st Sess.) to create, among other things, a criminal money laundering offense.[10] In March 1986, the Judiciary Committee held additional hearings. The witness testimony and lawmaker remarks at both hearings reflected an understanding that "laundering" as Congress understood it encompassed simpler techniques to smuggle and hide illegal proceeds abroad, as well as more sophisticated schemes.

For example, a United States Justice Department official testified that "some criminal organizations still wash their own illegally generated money by such relatively crude methods as one of their members' smuggling a suitcase full of currency out of the country for deposit in an offshore bank." *Money Laundering Legislation: Hearing on S. 572, S. 1335, and S. 1385 Before the Senate Comm. on the Judiciary*, 99th Cong., 1st Sess. 57 (1985) (statement of Stephen S. Trott, Assistant

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[10] S. 572, *supra*, and S. 1385, *supra*, substantially tracked the Commission's proposal for Section 1956. *Money Laundering Legislation: Hearing on S. 572, S. 1335, and S. 1385 Before the Senate Comm. on the Judiciary*, 99th Cong., 1st Sess. 38-43 (1985). S. 1335 was prepared by the United States Department of Justice and the United States Treasury Department. *Id.* at 1. Its draft of Section 1956 tracked the substance (although not the precise words) of the Commission's proposal, but (1) included transactions that affected interstate commerce even if they did not involve financial institutions and (2) substituted a "reckless disregard" standard for the Commission's "reason to know" standard applicable to the category of transactions involving illegal proceeds of crime. *Id.* at 6. S. 1335 also included a proposal for a separate criminal provision entitled "Receiving the proceeds of a crime." That proposal would have created a ten-year felony for anyone who "receives, possesses, conceals, or disposes of" money or property obtained in connection with a felony offense or for anyone who "brings or transfers" into the United States money or property obtained in connection with a felony violation of foreign drug trafficking laws. *Id.* at 20.

Attorney General, Criminal Division). Testimony from the Executive Director and Chief Counsel of the Commission emphasized the need for legislation to target the entire money laundering "process" in order to enable law enforcement "to intercept the money launderers, and the money, and the cash, and the profits, before they enter the bank." *Id.* at 100 (Testimony of James D. Harmon, Jr., Executive Director and Chief Counsel, President's Commission on Organized Crime).

Senator Joseph Biden expressed concern during his questioning of a Treasury Department official that as banks improved their compliance with reporting requirements to combat money laundering, "the down side" could be that criminals would revert to "physically transport[ing] [illicit cash] out of the United States by cargo and in luggage and by air." *White Collar Crime (Money Laundering): Hearings on Oversight of the Problem of White Collar Crime Before the Senate Comm. on the Judiciary*, 99th Cong., 1st Sess. Pt. 2, at 23 (1986) (*1986 Senate Hearings*) (statement of Senator Joseph Biden during questioning of David D. Queen (Queen), Acting Assistant Secretary for Enforcement and Operations, Department of the Treasury). Senator Biden noted that the Customs Service "ha[d] enough problem[s] trying to figure out what is coming into the country, let alone what is going out." *Ibid.* The Treasury Department official noted that the Customs Service recently had "interrupted" "several major currency smuggling operations[,] * * * some carrying $2 and $3 and $4 million in small bills out of the country." *Id.* at 35 (testimony of Queen). The official observed that the events were "in some ways * * * heartening because it is indicative of the fact that large-scale money laundering operations or illicit criminal organizations do not

feel comfortable processing their money through our banking institutions because of the improved degree of compliance." *Ibid.*

3. The bill (S. 2683, 99th Cong., 1st Sess. (1986)) that included the final version of 18 U.S.C. 1956 (2000 & Supp. V 2005) resulted from a bipartisan effort in the Senate Judiciary Committee to "address the concerns raised [about the prior bills] and to formulate consensus money laundering legislation." S. Rep. No. 433, 99th Cong., 2d Sess. 4 (1986). The Senate Report indicated that 18 U.S.C. 1956(a)(2) was "designed to illegalize international money laundering transactions" and defined the physical transportation of cash into and out of the United States as "laundering" activities in and of themselves:

> [Section 1956(a)(2)] covers situations in which money *is being laundered by* transferring it into the United States as well as those in which money *is being laundered by* transferring it out of the United States. The inclusion of this section is intended to support recent United States' efforts to obtain international cooperation to halt the flow of drug money, and to prevent the United States from becoming a haven in which foreign drug traffickers can keep or invest their earnings.

S. Rep. No. 433, *supra*, at 11 (emphasis added).

4. Petitioner recites few details from this legislative history and instead generalizes (Br. 28-29) that the "legislative record was unambiguous" that Congress was "concerned with the processes by which criminal organizations gained access to their illegitimate wealth by removing any appearance of illegality from their proceeds." That generalization does not assist petitioner. Congress *was* concerned about "processes" for

"removing any appearance of illegality from [criminal] proceeds." But disguising funds as legitimate is only *one* way to dispose of illegitimate funds such that they will be less likely to betray the criminal activity that generated them. And the legislative history reveals that Congress did not confine "laundering" to a single model or view it as amenable to a narrow solution. Congress's concern was that criminal organizations were profitable and increasingly more sophisticated, and that law enforcement needed better tools to find and seize illegal proceeds *no matter how* criminals sought to conceal or disguise them.[11] Stopping criminals from converting illegal proceeds into apparently legitimate assets was one aspect of the law enforcement challenge, but so was stopping the surreptitious flow of illegal proceeds across the border where they would be more difficult, if not impossible, to find. It was no oversight that Congress drafted a criminal statute that punishes the concealment or disguising of the attributes of illegal proceeds without use of the limiting phrase "appearance of legitimate wealth." That phrase would have hamstrung the effort to solve a broader problem. This Court should reject petitioner's invitation to read that phrase into the statute now.

5. Petitioner argues (Br. 30) that the statement in Senate Report No. 433, *supra*, that 18 U.S.C. 1956(a)(2) would cover "situations in which money is *being laun-*

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[11] Congress's broad enforcement goals are further illustrated by 18 U.S.C. 1957, which was enacted at the same time as Section 1956. Section 1957 creates a ten-year felony for engaging or attempting to engage in any monetary transaction by, to, or through a financial institution with the proceeds of specified unlawful activity if the property has a value exceeding $10,000 and the defendant knows the funds are derived from crime.

dered by transferring it" into or out of the United States demonstrates Congress's intent to reach only "transportations that are necessary preludes to further laundering transactions." Neither the text of the statute nor the legislative history supports that conclusion. Congress could have drafted Section 1956(a)(2) to require that the cross-border transportation of illegal proceeds be designed to "deliver the funds to a location where transactions that conceal or disguise the funds" would occur, as petitioner suggests. Indeed, Congress could have used words equivalent to those it employed in the "promotion" subsection of the same statute—transportation of illegal proceeds "with the intent to" engage in transactions that conceal or disguise the funds. 18 U.S.C. 1956(a)(1)(A)(i). But Congress did not write the statute that way, and there is no indication in the legislative history that one who transports illegal proceeds across the border in a way that conceals their attributes *also* must intend that the cash be transformed, through future transactions, into seemingly legitimate wealth.

Instead, Congress viewed "laundering" as a term that encompassed the transportation of funds into or out of the United States with the design to conceal or disguise an attribute of the proceeds, including its "location." The reason is that such transportation *vel non* would frustrate the ability of law enforcement to find the money—and thus prevent the funds from betraying the criminal nature of the enterprise, while at the same time permitting the launderer to evade taxes or forfeiture, promote further illegal activity, *or* transform the money into untraceable funds. That conclusion is reinforced by one of the stated purposes of Section 1956(a)(2)—"to obtain international cooperation to halt the flow of drug money." S. Rep. No. 433, *supra*, at 11.

This objective would be ill-served if drug money could *only* be halted at the border under this provision in the unlikely event that the government knew of the defendant's plans to engage in transactional money laundering in the future.

6. Petitioner also is incorrect (Br. 31) that the decision of the court of appeals "would resurrect the overbroad proposals that Congress rejected." Congress explained three ways in which 18 U.S.C. 1956 (2000 & Supp. V 2005) as enacted differed from the proposals Congress had considered. First, the statute as enacted contained heightened scienter requirements (the consensus bill "employ[ed] a scienter standard of 'knowing,' rather than 'reason to know' or 'reckless disregard'"). Second, the statute took "a qualitatively different approach" to "the nature of the transactions that it covers" by "applying its coverage to those transactions that can be said to constitute the core of money laundering—transactions designed to conceal or disguise the nature, location, source, ownership, or control of criminal proceeds, or to evade Federal or State cash reporting requirements" (the Commission's bill had "limited its coverage to bank transactions" and the administration bill "extended coverage to all transactions affecting interstate or foreign commerce"). Third, the statute "str[uck] a balance" between the Commission's bill (which limited its application to the proceeds of Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 *et seq.*, predicate crimes) and the administration bill (which covered the proceeds of any State or Federal crime) by "covering the proceeds of Federal financial offenses and foreign drug offenses as well as RICO predicate offenses." See S. Rep. No. 433, *supra*, at 9.

Petitioner's argument is directed only to the second modification. Petitioner contends (Br. 31) that, unless an "appearance of legitimate wealth" requirement is read into the "conceal or disguise" provision of the statute, the statute will revert to covering "all transactions or transportations involving illicit money" because "[v]irtually *every*" transaction or international transportation in illegal funds "will involve some level of concealment and secrecy, lest the criminals expose their underlying criminal activity." Petitioner is incorrect. Not every transaction in or transportation of illegal proceeds will evidence a design to conceal or disguise a pertinent attribute of illegal proceeds. A commercial purchase using illegally-earned money, for instance, may or may not be designed to conceal or disguise attributes of the funds. So too with a mere deposit of illegal funds into a personal bank account, or a transfer of funds between accounts. When the circumstances surrounding a transaction or transportation do not demonstrate it was designed to conceal or disguise in the relevant sense, a money laundering conviction will not be supported by the evidence.[12] The result would be the same

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[12] See, *e.g.*, *United States* v. *Corchado-Peralta*, 318 F.3d 255, 259 (1st Cir. 2003) (commercial purchases, deposit of funds into account, and single transfer of funds between accounts were insufficient to show that transactions were designed to conceal); *Stephenson*, 183 F.3d at 120-121 (car purchase using illegal proceeds was insufficient to show design to conceal); *United States* v. *Herron*, 97 F.3d 234, 236 (8th Cir. 1996) (wire transfers alone did not evidence design to conceal), cert. denied, 519 U.S. 1133, and 520 U.S. 1129 (1997); *United States* v. *Willey*, 57 F.3d 1374, 1388 (5th Cir.) (mere transfer of funds between accounts was insufficient to show design to conceal), cert. denied, 516 U.S. 1029 (1995); *United States* v. *Sanders*, 929 F.2d 1466, 1472 (10th Cir.) (buying a car in own name or daughter's name with drug proceeds is not a

under the court of appeals' decision; indeed, the court applied the same analysis in this case. Pet. App. 16a.

Moreover, the Senate Report indicates that the "concept" for the international transportation provision of Section 1956 was "derived" from the provision in the administration's bill for receiving the proceeds of a crime. S. Rep. No. 433, *supra*, at 11. See note 10, *supra*. Section 1956(a)(2) "avoid[ed] two pitfalls" of the administration's proposal, "which would have been triggered by the mere receipt of property and by the recipient's mere 'belief' that the property represented the proceeds of crime." *Ibid.* The Senate Report indicates that, as enacted, the statute "requires that the accused defendant engage in an act of transporting or attempted transporting and either intend to facilitate a crime or know that the transaction [sic] was designed to conceal a crime." *Ibid.* Thus, in enacting Section 1956(a)(2) in particular, Congress elected to criminalize the cross-border transportation of illegal money that is designed to conceal, rather than criminalize the mere receipt of foreign drug money. Petitioner's argument (Br. 32) that the court of appeals' ruling "reverses" an "explicit choice by Congress" has no support.

C. The Bulk Cash Smuggling Statute Does Not Support Petitioner

Petitioner contends that his conduct could have been charged as a violation of 31 U.S.C. 5332 (Supp. V 2005), which makes "bulk cash smuggling" into or out of the United States a five-year felony, and that the availability of that charge means that his conduct was not covered by 18 U.S.C. 1956 (2000 & Supp. V 2005). The bulk

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violation of 18 U.S.C. 1956(a)(1)(B)(i); Section 1956 is not a money spending statute), cert. denied, 502 U.S. 846 (1991).

cash smuggling statute supports the government's position, not petitioner's.

1. The offense of bulk cash smuggling was created in 2001 as part of the USA PATRIOT Act.[13] The statute is violated when (1) with the intent to evade a currency reporting requirement under 31 U.S.C. 5316,[14] (2) a person knowingly conceals more than $10,000 in currency or monetary instruments on his person or in a conveyance, piece of luggage, merchandise, or other container, and (3) transports or attempts to transport the funds across the United States border in either direction. 18 U.S.C. 5332 (Supp. V 2005). The statute provides for criminal and civil forfeiture of any property involved in the violation. The statute was enacted in response to *United States* v. *Bajakajian*, 524 U.S. 321 (1998), which held that, when a violation of only a currency reporting offense is proved, forfeiture of the full amount of the unreported currency would violate the Excessive Fines Clause. *Id.* at 337-340. See *United States* v. *Jose*, 499 F.3d 105, 109-110 (1st Cir. 2007).

Unlike money laundering, the offense of bulk cash smuggling requires no evidence that the smuggled funds were derived from illegal activity. Bulk cash smuggling is shown when a defendant knowingly conceals more than $10,000, whether legally- or illegally-derived, *and* acts with the intent to evade the requirement for filing a currency transaction report. Neither of these two requirements (a threshold amount of

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[13] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, § 371, 115 Stat. 336.

[14] Section 5316 requires the filing of a Currency and Monetary Instrument Report whenever monetary instruments of more than $10,000 are transported into or out of the United States. 31 U.S.C. 5316.

$10,000 or the intent to evade a reporting requirement) applies under the money laundering statute. Rather, in an international money laundering case, the government must prove that the funds at issue, which can be of any amount, were derived from specified unlawful activity and that the defendant knew the funds were illegal proceeds. In addition, the government *may* prove that the defendant's cross-border transportation was designed in whole or in part to avoid a transaction reporting requirement, in which case it will have proven a 20-year felony (see 18 U.S.C. 1956(a)(2)(B)(ii)),[15] or the government may prove, among other things, that the transportation was designed to conceal or disguise a pertinent attribute of the proceeds.

2. In light of these differences, petitioner's argument (Br. 35) that the bulk cash smuggling statute was "plainly enacted to address the conduct at issue here" is without merit. It is questionable whether the government even could have proved, as it must under the bulk cash smuggling statute, that petitioner knew of the currency transaction reporting requirement at the border and intended to evade it. Petitioner was stopped 114 miles from the border, and there is no record evidence that petitioner was on notice of the requirement. Cf. *United States* v. *Tatoyan*, 474 F.3d 1174, 1177 (9th Cir. 2007) (evidence was sufficient to show actual knowledge of reporting requirement where inspector explained requirement to defendants orally, defendants were given a customs form, placards were posted around airport, and defendants' passports detailed the requirement in writing).

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[15] Petitioner does not contend that he should have been charged under 18 U.S.C. 1956(a)(2)(B)(ii), which would not have changed his sentencing exposure.

More importantly, petitioner's crime entailed culpable conduct not addressed by the bulk cash smuggling statute. The evidence in this case showed that the cash petitioner attempted to transport across the border was drug trafficking proceeds. Where the government can prove that funds in transport are derived from specified criminal activity and the defendant had knowledge of the unlawful nature of the proceeds, and where there is evidence that the transportation was designed to conceal or disguise the funds, bulk cash smuggling is not the appropriate charge because it does not reflect the gravity of the offense. Petitioner emphasizes (Pet. Br. 36) the difference in the maximum penalty between money laundering (20 years) and bulk cash smuggling (five years). The penalty difference, however, reflects the increased magnitude of the crime when the funds are not simply being smuggled, but are demonstrably the proceeds of criminal activity, the defendant has *knowledge* of that fact, and the transportation is designed to conceal or disguise one of the attributes of the illegal proceeds.

3. Petitioner recites (Br. 34) the statement in the House Report prepared in connection with the bulk cash smuggling bill that "[p]resently, the only law enforcement weapon against [bulk cash] smuggling is section 5316 of title 31, United States Code, which makes it an offense to transport more than $10,000 in currency or monetary instruments into, or out of, the United States without filing a report with the United States Customs Service." H.R. Rep. No. 250, 107th Cong., 1st Sess. Pt. 1, at 36-37 (2001). That statement does not assist petitioner. A currency reporting violation *was* the only available charge in a smuggling case where there was no evidence that the concealed currency was criminally

derived (such as *Bajakajian*). An ambiguous sentence in a House Report written 15 years after the money laundering statute became law permits no inference that Congress intended for the money laundering statute to contain an "appearance of legitimate wealth" limitation that is absent from its text and is contrary to its legislative history.

In fact, the opposite is true. In its statement of findings that accompanied the bulk cash smuggling bill, Congress declared:

> *The transportation and smuggling of cash in bulk form may now be the most common form of money laundering*, and the movement of large sums of cash is one of the most reliable warning signs of drug trafficking, terrorism, money laundering, racketeering, tax evasion and similar crimes.

USA PATRIOT Act, Pub. L. 107-56, § 371(a)(3), 115 Stat. 337; see § 371(b), 115 Stat. 337 (emphasis added). That finding directly refutes petitioner's argument that Congress could not have intended petitioner's conduct to constitute "money laundering" under 18 U.S.C. 1956(a)(2). Congress has consistently understood "money laundering" to encompass the surreptitious cross-border transportation (*i.e.*, smuggling) of illegal proceeds. What Congress lacked was a means to confiscate and forfeit bulk cash when it could not yet be tied to crime. Smuggling of that sort was a "reliable warning sign" of money laundering, but it could not be prosecuted under the laundering statute. A bulk cash smuggling offense provided the answer.

D. The Rule Of Lenity Is Inapplicable

Petitioner asserts incorrectly (Br. 14) that the rule of lenity is "a crucial aid in the construction of any crim-

inal statute." It is not. The rule of lenity applies only if, "at the end of the process of construing what Congress has expressed," including the use of ordinary tools of statutory construction, *Callanan* v. *United States*, 364 U.S. 587, 596 (1961), "there is a grievous ambiguity or uncertainty in the statute." *Muscarello* v. *United States*, 524 U.S. 125, 139 (1998) (internal quotation marks and citations omitted). Neither "[t]he mere possibility of articulating a narrower construction," *Smith* v. *United States*, 508 U.S. 223, 239 (1993), nor "[t]he simple existence of some statutory ambiguity" is sufficient to warrant application of the rule. *Muscarello*, 524 U.S. at 138. The rule of lenity applies "only if, after seizing everything from which aid can be derived, . . . [the Court] can make no more than a guess as to what Congress intended." *Ibid.* (internal quotation marks and citations omitted).

There is no cause for resort to the rule of lenity (Br. 37-38) in this case. The text of the money laundering statute contains no "appearance of legitimate wealth" requirement and the plain meaning of the text is buttressed by the statute's purpose and legislative history. Congress has written a statute that "demonstrates breadth," not "ambiguity." *Sedima, SPRL* v. *Imrex Co.*, 473 U.S. 479, 499 (1985) (internal quotation marks and citation omitted). Moreover, the rule of lenity has the greatest force when the broader reading of a statute threatens to criminalize conduct that reasonable people could regard as innocent. See *Arthur Anderson LLP* v. *United States*, 544 U.S. 696, 703-704 (2005). There is no such danger here. The concealment of criminally-derived proceeds is inherently wrongful, and the requirements under Section 1956 that a defendant know of the illegal nature of the proceeds and know that the cross-

border transportation of those proceeds is designed to conceal or disguise one or more of their attributes ensures that innocent conduct will not be criminalized. See 18 U.S.C. 1956(a)(2)(B)(i).

E. The Evidence, Viewed Under A Correct Interpretation Of The Money Laundering Statute, Supports Petitioner's Conviction

The government was not required to prove that petitioner's transportation of drug proceeds to Mexico was designed to "create the appearance of legitimate wealth." The government was required to prove that the transportation was "designed in whole or in part" to "conceal or disguise" the nature, location, ownership, source, or control of the proceeds. The government clearly met that burden.

1. There is no dispute that petitioner's movement of drug proceeds toward Mexico in his car constituted "transportation" of those funds. It is also clear that any transportation of illegal funds covered by 18 U.S.C. 1956(a)(2)(B)(i) will be "designed" to alter the geographic location of illegal funds by moving them outside the United States (if the funds began in the country) or to a location inside the United States (if the funds began elsewhere). Whether that cross-border transportation of the funds also is "designed" to conceal or disguise one or more attributes of the funds within the meaning of 18 U.S.C. 1956 (2000 & Supp. V 2005) requires examination of the circumstances of the transportation and the inferences that can reasonably be drawn from the circumstances. See *United States* v. *Cruzado-Laureano*, 404 F.3d 470, 483 (1st Cir.) (design to conceal may be proved by direct or circumstantial evidence), cert. denied, 546 U.S. 1009 (2005).

As with any fact-intensive determination, a range of scenarios exists. If an individual transports illegal currency in a way that does not differ from how currency ordinarily is transported—such as in a wallet or purse or pocket—then no reasonable inference could be drawn, based on the transportation method alone, that the transportation was designed to conceal or disguise a pertinent attribute of the proceeds. If that same individual engages in no conduct designed to prevent the discovery of that money or to evade law enforcement, and makes no incriminating admissions, there would remain no reasonable basis for an inference that the transportation was designed to conceal or disguise a pertinent attribute of the proceeds. And if no independent evidence establishes that concealment or disguising of a pertinent attribute of the proceeds would occur at the point of destination, then a factfinder still would lack a reasonable and non-speculative basis for an inference that the transportation was "designed to conceal or disguise" within the meaning of the money laundering statute. See *United States* v. *Gonzalez-Rodriguez*, 966 F.2d 918 (5th Cir. 1992) (evidence insufficient to establish design to conceal or disguise when defendant possessed $8000 in airport, readily disclosed it to law enforcement and made no false exculpatory statements).

If any of those variables changes, then the result could change as well. An unusual method of concealing illegal proceeds during transportation could support an inference that the transportation is "designed to conceal" pertinent attributes of the funds. Evidence of unusual, evasive, or secretive conduct during the transportation could support the same inference. A damaging admission by the defendant or independent evidence that the purpose of the transportation was to conceal or

disguise an attribute of the proceeds as part of a larger effort to remove funds from the United States to avoid having the funds betray criminal activity would likewise support a conviction.[16]

2. A similar analysis applies in transactional money laundering cases when the transaction is a commercial purchase. As with the ordinary transportation of money, a degree of disguising or concealment is inherent in any ordinary purchase. Exchanging illegal funds for an item purposefully alters the location, ownership, and control of the funds and converts the funds into "a different and more legitimate-appearing form." *United States* v. *Willey*, 57 F.3d 1374, 1384 (5th Cir.), cert. denied, 516 U.S. 1029 (1995). Every such purchase therefore has the effect of concealing attributes of the funds. To prevent 18 U.S.C. 1956 (2000 & Supp. V 2005) from becoming a "money spending statute," courts examine the circumstances of the transaction to discern whether there is "more than a trivial motivation to conceal." *United States* v. *Garcia-Emanuel*, 14 F.3d 1469, 1474

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[16] For instance, in *United States* v. *Carr*, 25 F.3d 1194 (1994), cert. denied, 513 U.S. 939 (1994), and 513 U.S. 1086 (1995), the Third Circuit upheld a conviction for international money laundering where (1) the defendant received a carry-on bag from another person, (2) the defendant indicated at a customs checkpoint before boarding a plane to Colombia that he had only $4000 in cash, (3) the carry-on bag was found to contain $180,000 secreted in two coffee thermos mugs and a talcum powder container, (4) the defendant had an additional $6000 on his person, and (5) the defendant told a "highly suspicious, if not incredible, story" about retrieving the bag from a train station locker in response to an anonymous phone call. *Id.* at 1206. When concealment measures undertaken during the transportation are sufficiently unusual and probative, as in *Carr*, the jury reasonably can infer that the transportation has been "planned out in the mind," or "designed," to conceal the illegal proceeds by moving them abroad.

(10th Cir. 1994). Evidence that could support such a finding includes, but is not limited to:

> [S]tatements by a defendant probative of intent to conceal; unusual secrecy surrounding the transaction; structuring the transaction in a way to avoid attention; depositing illegal profits in the bank account of a legitimate business; highly irregular features of the transaction; using third parties to conceal the real owner; a series of unusual financial moves cu[lmin]ating in the transaction; or expert testimony on practices of criminals.

Id. at 1475-1476 (footnotes omitted).

3. The court of appeals applied these factors to the circumstances of this case and correctly held that petitioner's transportation of drug proceeds bore numerous indicia that the transportation was "designed" to "conceal or disguise" pertinent characteristics of the illegal funds. First, the transportation was designed to "conceal" the "location" and the "nature" of the funds by moving them to Mexico without detection by law enforcement. That design of the transportation was evidenced by petitioner's admitted destination of Mexico, the elaborate measures taken to convert the rear portion of the Beetle into a secret cargo compartment secured by screws, carpet tabs, and speaker boxes, and the use of scent-suppressing packaging materials on the money and animal hair around the compartment as a technique to distract drug-detection dogs.[17]

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[17] See *United States* v. *Garcia-Jaimes*, 484 F.3d 1311, 1322 (11th Cir. 2007) (evidence sufficient to support design to conceal in conspiracy case where defendants entered scheme to transport drug proceeds to Mexico in gas tanks on car hauler trailers; defendants "hid the money in the cars to prevent the authorities from finding it"), petition for cert. pending, No. 06-11863 (filed June 11, 2007); *United States* v. *Elso*, 422

The transportation also bore indicia of a design to conceal the "source," "ownership," and "control" of the proceeds. In transactional money laundering cases, the use of third parties is viewed as significant evidence of a design to conceal those attributes of illegal funds.[18] Here too, the evidence supports the conclusion that petitioner's transportation of illegal drug proceeds for an unidentified third person was designed to conceal the identity of that owner and controller of the funds. See *United States* v. *Garcia-Jaimes*, 484 F.3d 1311, 1322 (11th Cir. 2007) (plan to transport drug proceeds to Mexico "allowed the owner of the money to place it in the hands of a third party, which makes it difficult to determine both the owner and the source of the money"), petition for cert. pending, No. 06-11863 (filed June

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F.3d 1305, 1309 n.7 (11th Cir. 2005) (evidence sufficient to support design to conceal location of drug money where attorney retrieved drug proceeds from client's safe, loaded money in briefcase in car trunk, and attempted to drive proceeds to law office), cert. denied, 126 S. Ct. 2049 (2006); cf. *United States* v. *Farese*, 248 F.3d 1056, 1060 (11th Cir. 2001) (design to conceal "location" of proceeds evidenced by exchange of small-denomination bills into large-denomination bills; reducing volume of paper currency facilitates concealment for transportation out of country); *Stephenson*, 183 F.3d at 120 (design to conceal supported by evidence that defendant's wife put drug proceeds in safe deposit box at defendant's direction); *United States* v. *Wolny*, 133 F.3d 758, 760-761 (10th Cir. 1998) ("unusual secrecy" of hotel-room meeting supported inference of design to conceal).

[18] See, *e.g.*, *Abbell*, 271 F.3d at 1299 (payments made to cartel employees by attorneys were designed to conceal that cartel leader was source of money); *United States* v. *Powers*, 168 F.3d 741, 748 (5th Cir.) (intent to conceal source of illegal funds evidenced by use of checks made payable to third party), cert. denied, 528 U.S. 945 (1999); *United States* v. *Beddow*, 957 F.2d 1330, 1334-1335 (6th Cir. 1992) (intent to disguise ownership of proceeds evidenced by use of "front man" to transport money overseas and purchase emeralds).

11, 2007). Petitioner told the officers he did not know who paid him to drive the Beetle to Mexico, petitioner gave an inconsistent account at trial about how he came to possess the Beetle from a Mr. Morcia, and petitioner provided no satisfactory explanation for the lengthy bus journey, without luggage, that preceded his occupation of the Beetle. The conclusion that petitioner's transportation of illegal proceeds was designed to conceal the ownership and control of the funds was further evidenced by expert testimony that drug organizations utilize couriers who know little about the source of their cargo, precisely because this business model limits the information that can be provided to law enforcement in the event the driver is stopped. See *Garcia-Emanuel*, 14 F.3d at 1476 (expert testimony on practices of criminals can support finding of design to conceal or disguise).

Moreover, the court of appeals correctly viewed petitioner's substantial efforts at concealment *during* transportation as circumstantial evidence that the larger design of the transportation was to "successfully transport[] the funds to Mexico without detection" so that the funds would be "better concealed or concealable after the transportation than before." Pet. App. 16a. In the words of the dissent, the court of appeals determined that petitioner was "transporting money to conceal its location" and not just "concealing money to transport it." *Id.* at 27a. That finding was well-supported by the evidence.[19]

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[19] The facts and decision here contrast with those of *United States* v. *Dimeck*, 24 F.3d 1239 (10th Cir. 1994), upon which petitioner relies (Pet. Br. 27-28). Unlike this case, *Dimeck* involved neither cross-border transportation nor elaborate measures designed to conceal the location and nature of illegal proceeds from law enforcement. *Dimeck* involved

4. Petitioner argues (Br. 43) that it "simply is not rational to infer a further purpose of concealment at the destination from the mere fact that the money was hidden during transportation" and hypothesizes that the illegal funds might be used openly in Mexico to "finance a vacation" or make other purchases. Whatever is done with the illegal proceeds in Mexico, however, they have been surreptitiously moved to a location where United States law enforcement authorities are impaired from detecting and intercepting them. That conduct falls squarely within the terms of the statute and was a

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a plan to transport drug proceeds from Detroit to California. The intended recipient of the funds was a marijuana supplier who needed the money to pay his own suppliers. *Id.* at 1243. Dimeck merely delivered the drug proceeds in an unsealed box to a courier in a Detroit hotel room. Dimeck suggested that the courier put the money in his suitcase or "tape [the box] up" to take it to California. *Ibid.* (brackets in original). The proceeds traveled no farther, because the courier was a government informant who turned the money over to the Drug Enforcement Administration. *Ibid.*

The Tenth Circuit determined that Dimeck's "delivery of the money did not result in the kind of transaction prohibited by [18 U.S.C.] 1956(a)(1)(B)(i)." *Dimeck*, 24 F.3d at 1246. Because the evidence showed that the only purpose for which the money was being delivered was to permit the California supplier to pay his own suppliers, the court determined that on the facts of that case, the use of couriers and the "secrecy surrounding the funds" were not designed "to confuse or mislead anyone as to the characteristics of those proceeds, or to assist in allowing these proceeds to enter into legitimate commerce." *Ibid.* Instead, the transportation of the funds was "the final part of the [drug distribution] business deal." *Id.* at 1247. Thus, the holding in *Dimeck* is that transactional money laundering is not shown when the evidence demonstrates that funds are being delivered for the purpose of closing the "business deal." The manner in which the funds were transported was not the focus of the court and was irrelevant to the holding.

specific concern of Congress in enacting the cross-border transportation provision of the laundering offense.[20]

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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[20] The en banc dissent hypothesized that the result in this case would mean that a "young petty thief" who pickpockets a tourist in Texas and attempts to cross the border with the proceeds in his shoe would violate the money laundering statute. It is not clear that the dissent's example implicates any form of "specified unlawful activity" under the money laundering statute. Setting aside that difficulty, transporting currency concealed in a shoe is unusual enough (absent evidence that the defendant routinely transported money that way) to give rise to a reasonable inference that the transportation of illegally-obtained funds to Mexico in those circumstances was designed to conceal pertinent attributes of the money. Prosecution of such an offense under Section 1956 would be viable (but unlikely, given the petty nature of the underlying offense). If that same defendant instead secreted in his shoe a $500,000 money order representing the illegal proceeds of a scheme to defraud senior citizens of their retirement savings, then the claimed "absurdity" of the result is diminished.

APPENDIX

1. 18 U.S.C. 1956 (2000 & Supp. V 2005) provides:

Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a

place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) PENALTIES.—

(1) IN GENERAL.—Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) $10,000.

(2) JURISDICTION OVER FOREIGN PERSONS.—For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, includ-

ing any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) COURT AUTHORITY OVER ASSETS.—A court described in paragraph (2) may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) FEDERAL RECEIVER.—

(A) IN GENERAL.—A court described in paragraph (2) may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsec-

tion (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) APPOINTMENT AND AUTHORITY.—A Federal Receiver described in subparagraph (A)—

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant—

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section—

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged

in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" includes—

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101);

(7) the term "specified unlawful activity" means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such

term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978));[1]

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving—

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774);

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged

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[1] So in original. The second closing parenthesis probably should not appear.

offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

(vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embez-

zlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(*l*) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006[2] (relating to fraudulent Federal credit institution entries), 1007[2] (relating to Federal Deposit Insurance transactions), 1014[2] (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032[2] (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section

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[2] So in original. Probably should be preceded by "section".

1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), or section 2339A or 2339B (relating to providing material support to terrorists), of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section

16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)[3]

ENVIRONMENTAL CRIMES

(E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.); or

(F) any act or activity constituting an offense involving a Federal health care offense;

(8) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal

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[3] So in original. Probably should be followed by a semicolon.

penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

(g) NOTICE OF CONVICTION OF FINANCIAL INSTITUTIONS.—If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section

1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(i) VENUE.—(1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in—

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

(2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person whc conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be

charged in any district in which the transaction takes place.

2. 18 U.S.C. 1957 provides:

Engaging in monetary transactions in property derived from specified unlawful activity

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both.

(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

(d) The circumstances referred to in subsection (a) are—

(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General.

(f) As used in this section—

(1) the term "monetary transaction" means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of this title) by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title, but such term does not include any transaction necessary to preserve a person's right to representation

as guaranteed by the sixth amendment to the Constitution;

(2) the term "criminally derived property" means any property constituting, or derived from, proceeds obtained from a criminal offense; and

(3) the term "specified unlawful activity" has the meaning given that term in section 1956 of this title.

3. 31 U.S.C. 5332 (Supp. V 2005) provides:

Bulk cash smuggling into or out of the United States

(a) CRIMINAL OFFENSE.—

(1) IN GENERAL.—Whoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than $10,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, and transports or transfers or attempts to transport or transfer such currency or monetary instruments from a place within the United States to a place outside of the United States, or from a place outside the United States to a place within the United States, shall be guilty of a currency smuggling offense and subject to punishment pursuant to subsection (b).

(2) CONCEALMENT ON PERSON.—For purposes of this section, the concealment of currency on the person of any individual includes concealment in any article of clothing worn by the individual or in any luggage, backpack, or other container worn or carried by such individual.

(b) PENALTY.—

(1) TERM OF IMPRISONMENT.—A person convicted of a currency smuggling offense under subsection (a), or a conspiracy to commit such offense, shall be imprisoned for not more than 5 years.

(2) FORFEITURE.—In addition, the court, in imposing sentence under paragraph (1), shall order that the defendant forfeit to the United States, any property, real or personal, involved in the offense, and any property traceable to such property.

(3) PROCEDURE.—The seizure, restraint, and forfeiture of property under this section shall be governed by section 413 of the Controlled Substances Act.

(4) PERSONAL MONEY JUDGMENT.—If the property subject to forfeiture under paragraph (2) is unavailable, and the defendant has insufficient substitute property that may be forfeited pursuant to section 413(p) of the Controlled Substances Act, the court shall enter a personal money judgment against the defendant for the amount that would be subject to forfeiture.

(c) CIVIL FORFEITURE.—

(1) IN GENERAL.—Any property involved in a violation of subsection (a), or a conspiracy to commit such violation, and any property traceable to such violation or conspiracy, may be seized and forfeited to the United States.

(2) PROCEDURE.—The seizure and forfeiture shall be governed by the procedures governing civil

forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

(3) TREATMENT OF CERTAIN PROPERTY AS INVOLVED IN THE OFFENSE.—For purposes of this subsection and subsection (b), any currency or other monetary instrument that is concealed or intended to be concealed in violation of subsection (a) or a conspiracy to commit such violation, any article, container, or conveyance used, or intended to be used, to conceal or transport the currency or other monetary instrument, and any other property used, or intended to be used, to facilitate the offense, shall be considered property involved in the offense.